

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 19 CVS 3859

THE UMSTEAD COALITION; RANDAL L. DUNN, JR.; TAMARA GRANT DUNN; WILLIAM DOUCETTE; and TORC (a/k/a TRIANGLE OFF-ROAD CYCLISTS),

Plaintiffs,

v.

RDU AIRPORT AUTHORITY and
WAKE STONE CORPORATION,

Defendants.

ORDER

THIS MATTER came on to be heard before the undersigned Superior Court Judge on Defendants' Motions for Summary Judgment and on Plaintiffs' Motion for Partial Summary Judgment and Motion for Preliminary Injunction. This Court held a hearing on the motions on September 19, 2019.¹ With Plaintiffs and Defendants being represented by counsel, and after hearing all arguments, and reviewing the record proper and Court file, the Court determines that there are no genuine issues of material fact and finds the following:

UNDISPUTED FACTS

1. Plaintiff the Umstead Coalition is a North Carolina non-profit corporation that is dedicated to the appreciation, use, and preservation of the William B. Umstead State Park and the Richland Creek natural area.
2. Plaintiffs Randal L. Dunn, Jr. and Tamara Grant Dunn are residents of Wake County, North Carolina and live at 2232 Old Reedy Creek Road, which is

¹ As the Court explained at the hearing of this matter, the function of the Court is not to question the wisdom of the lease by RDUAA or whether other, better alternative uses of the property at issue exist, but rather, its function in this case is to determine whether RDUAA was entitled to lease the property without the joinder of the owning municipalities and, if so, whether RDUAA followed the proper procedures in doing so.

adjacent to property to be leased by Defendant Raleigh-Durham Airport Authority (RDUAA) for use as a quarry.

3. Plaintiff William Doucette is a resident of Wake County, North Carolina and member of the Umstead Coalition.
4. Plaintiff TORC (a/k/a Triangle Off-Road Cyclists) is a North Carolina non-profit corporation with the stated mission of ensuring the future of mountain biking in the Triangle Area of North Carolina through promotion of responsible riding, establishment and maintenance of mountain biking trails, and preservation of North Carolina's natural resources.
5. Defendant RDUAA is a municipal corporation established by the City of Raleigh, City of Durham, County of Wake, and County of Durham pursuant to Chapter 168 of the Public-Local Laws of 1939 (hereinafter, the "RDU Charter"). RDUAA's principal office is located at 1000 Trade Drive, RDU Airport, NC 27623.
6. Defendant Wake Stone is a North Carolina corporation having its principal office located at 6821 Knightdale Boulevard, Knightdale, NC 27545.
7. RDUAA controls a 105-acre parcel of land (the "Property") located off of Reedy Creek Road and adjacent to both the William B. Umstead State Park and an existing stone quarry currently operated by Wake Stone.
8. Title to the Property is vested in the City of Raleigh, City of Durham, County of Wake, and County of Durham, per the deeds recorded in the Wake County Register of Deeds in Deed Book 2416, page 433; Deed Book 2489, page 689; and Deed Book 2070, page 69.
9. On September 8, 2017, RDUAA made the Property available for lease.
10. RDUAA received two offers to lease or purchase the Property. One was an offer to purchase from the North Carolina Conservation Fund on behalf of William B. Umstead State Park, and the other was an offer from Wake Stone to lease the Property for quarrying.
11. RDUAA initially declined both offers on October 19, 2017.
12. On February 27, 2019, RDUAA sent out an e-mail notice that there would be a special meeting on March 1, 2019 at 9:00 a.m. to discuss a long-term lease proposal from Wake Stone to operate a rock quarry on the Property.

13. At the March 1, 2019 meeting, seven of the eight members of the RDUAA board voted to approve the proposed twenty-five-year lease of the Property to Wake Stone. The remaining member of the board abstained from voting.
14. A number of protesters were present at the March 1, 2019 meeting, but the Board did not provide any opportunity for public comment regarding the proposed lease.
15. On March 1, 2019, RDUAA and Wake Stone signed and executed a twenty-five-year lease of the Property (the “Lease”) to Wake Stone for operation of a rock quarry. The Lease also contains an option clause to extend the Lease for an additional term of ten years.
16. The Lease grants to Wake Stone, during its applicable term, the right “to have and to hold the Premises together with all privileges and appurtenances thereto . . . for the sole and only use of [Wake Stone].”
17. RDUAA did not seek the input or approval of the Cities of Raleigh and Durham and the Counties of Wake and Durham before entering into the Lease.
18. Revenue generated from the Lease is intended to help fund airport operations.
19. RDUAA is currently party to more than 40 leases of ten years or longer, and the Cities of Raleigh and Durham and the Counties of Wake and Durham have never asserted or sought approval authority over such leases.
20. The Federal Aviation Administration (FAA) directs that airport sponsors like RDUAA use their non-aviation assets (such as non-aeronautical real property) to generate revenues to subsidize aeronautical activities in order to reduce the economic impact on aviation users and the aviation public.
21. The Property was included in multiple Airport Layout Plans including the one approved by the FAA on November 20, 2017 in connection with RDUAA’s long-term development plan known as Vision 2040. That FAA-approved Airport Layout Plan designated the Property for “industrial/quarry” use.
22. RDUAA acquired the Property with RDUAA funds and no federal funds or grants from the FAA or other agency were used in the acquisition of the Property.
23. Subsequent to the filing of Plaintiffs’ complaint, the FAA also issued a letter to RDUAA informing RDUAA that the FAA would not need to provide any sort of release or approval in order for RDUAA to lease the Property.

24. There is no evidence that the Lease is inconsistent with any grant or agreement under which the airport is held.

25. Plaintiffs filed their Verified Complaint for Declaratory Judgment and Injunctive Relief on March 12, 2019 in which they assert three causes of action:

- a. Plaintiffs request declaratory judgment that RDUAA had no authority to authorize the Lease pursuant to N.C.G.S. § 63-56(f) without approval of the Cities of Raleigh and Durham and the Counties of Wake and Durham, that RDUAA violated the Open Meeting Law in N.C.G.S. § 143-318.9, and that RDUAA violated the procedures for the sale of real property in N.C.G.S. § 160A-272(b1).
- b. Plaintiffs request declaratory judgment that RDUAA violated federal and North Carolina law by approving the Lease without approval of the FAA as required by N.C.G.S. § 63-47.
- c. Plaintiffs request a Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction.

26. On August 7, 2019, RDUAA filed its Motion to Dismiss and Motion for Summary Judgment. RDUAA also filed a supporting memorandum asserting that Plaintiffs' claims should be dismissed as a matter of law and that Defendants are entitled to judgment as a matter of law because RDUAA had specific statutory authority to enter into the Lease, the Lease did not violate applicable FAA laws and regulations, and RDUAA's decision to enter into the Lease was not subject to any other statutory constraints asserted by Plaintiffs.

27. On August 7, 2019, Plaintiffs also filed their Motion for Preliminary Injunction and Motion for Partial Summary Judgment. In their supporting memorandum, Plaintiffs reasserted arguments raised in their causes of action.

CONCLUSIONS OF LAW

1. Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C.G.S. § 1A-1, Rule 56(c) (2017).
2. There is no genuine dispute as to the material facts found by the Court above. Accordingly, the Court proceeds to determine whether any party is entitled to judgment as a matter of law.

3. In 1929, the General Assembly enacted An Act Authorizing Cities, Towns and Counties to Establish, Construct, Improve, Equip, Maintain and Operate Airports and/or Landing Fields (hereinafter “First N.C. Public Airport Act”). 1929 N.C. Pub. Laws ch. 87. This First N.C. Public Airport Act allowed governing bodies of any city, town and county to “jointly acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports,” *id.* § 4, but it failed to provide how an airport that was jointly owned would be operated.
4. In 1939, the RDU Charter enabled the Cities of Raleigh and Durham and the Counties of Wake and Durham to create what is now known as Raleigh-Durham International Airport. The legislation provided that the governing bodies of the cities and counties appoint a board that was legislatively “vested with the authority to control, lease, maintain, improve, operate, and regulate the joint airport or landing field.” 1939 N.C. Public-Local Laws ch. 168, § 7. Section 7 further provided that the board would have “*complete authority* over any airport or landing field jointly acquired by the several governmental bodies represented on the board.” *Id.* (emphasis added).
5. In 1945, the General Assembly enacted legislation entitled An Act Relating to Aeronautics; Defining Terms; Providing for the Acquisition, Establishment, Construction, Enlargement, Improvement, Maintenance, Equipment, Operation and Regulation of Airports, Other Air Navigation Facilities and Airport Protection Privileges by Municipalities; Permitting the Acceptance of Federal Aid; Authorizing Joint Action by Municipalities, and to Make Uniform the Law with Reference to Public Airports (hereinafter “Second N.C. Public Airport Act”). 1945 N.C. Sess. Laws ch. 490. The Second N.C. Public Airport Act expanded the First N.C. Public Airport Act and is now embodied in Chapter 63 of the North Carolina General Statutes.
6. The Second N.C. Public Airport Act filled the gap left by the First N.C. Public Airport Act by providing for how airports jointly operated under the Second N.C. Public Airport Act would be governed and operated. The Second N.C. Public Airport Act provided, among other things, that: (1) municipalities may by agreement jointly operate an airport, 1945 N.C. Sess. Laws ch. 490, § 9(b); (2) municipalities may create a board for the purpose of operating an airport and such a board would be vested with the powers given the municipalities, *id.* §§ 9(d)-(f). However, unlike the complete authority legislatively vested in the RDUAA, the municipalities could, by agreement, limit the power and authority of the board. *Id.* § 9(f).

7. In 1946, Congress passed the Federal Airport Act, which established a federal program for the development of civilian airports. Federal Airport Act of 1946, Pub. L. No. 79-377, 60 Stat. 170 (1946); *see generally* 49 U.S.C. ch. 471. Among many other things, the Federal Airport Act provides for grants to civilian airports. 48 U.S.C. §§ 47104-47107. Upon acceptance of a grant or grants, the civilian airport is required to enter into and abide by a grant agreement. 49 U.S.C. § 47108.
8. The powers granted to the RDUAA board were further defined in 1955 when the General Assembly revised section 7 of the RDU Charter. Among other powers and responsibilities, the RDUAA was authorized “[t]o lease (without the joinder in the lease agreements of the owning municipalities, to wit, the Counties of Wake and Durham, and the Cities of Raleigh and Durham) for a term not to exceed 15 years, and for purposes not inconsistent with the grants and agreements under which the said airport is held by said owning municipalities, real or personal property under the supervision of or administered by the said Authority.” 1955 N.C. Sess. Laws ch. 1096, § 1. This included the power “[t]o operate, own, control, regulate, lease or grant to others the right to operate any airport premises, restaurants, apartments, hotels, motels, agriculture fairs, tracks, motion picture shows, cafes, soda fountains, or other businesses, amusements or concessions for a term not exceeding 15 years, as may appear to said Authority advantageous or conducive to the development of said airport.” *Id.*
9. The powers granted to the RDUAA board were further expanded by the legislature in a 1957 amendment that stated, in part:

In addition to all other rights and powers [conferred in the RDU Charter], the Raleigh-Durham Airport Authority . . . is authorized and empowered to exercise the powers granted to municipalities by the terms of Article 6, Chapter 63, of the General Statutes of North Carolina concerning public airports and related facilities.

1957 N.C. Sess. Laws ch. 455 § 2.

10. That power of the RDUAA to lease without joinder in the lease agreements of the owning municipalities was confirmed and expanded by a 1959 amendment that increased the authorized lease period to “a term not to exceed 40 years.” 1959 N.C. Sess. Laws ch. 755, § 1.

11. Pursuant to these provisions, RDUAA has authority to enter into the Lease with Wake Stone to operate a business that the authority finds advantageous or conducive to the development of the airport because the Lease grants to others the right to operate a business on airport property for a term shorter than 40 years for the purpose of generating revenue for the airport.
12. Plaintiffs, citing *Quinn v. Quinn*, 243 N.C. App. 374, 777 S.E.2d 121 (2015) (giving meaning to the word “otherwise”), and *State v. Lee*, 277 N.C. 242, 176 S.E.2d 772 (1970) (giving meaning to the phrase “other like weapons”), argue that the phrase in the RDU Charter “other businesses, amusements or concessions” is modified or limited by the types of business and uses immediately preceding that phrase. Effectively, Plaintiffs argue that the other businesses must be similar to restaurants, apartments, hotels, motels, agricultural fairs, tracks, motion picture shows, cafes, and soda fountains because, under the rule *ejusdem generis*,

where general words follow a designation of particular subjects or things, the meaning of the general words will ordinarily be presumed to be, and construed as, restricted by the particular designations and as including only things of the same kind, character and nature as those specifically enumerated.

Quinn, 243 N.C. App. at 382, 777 S.E.2d at 126 (quoting *Lee*, 277 N.C. at 244, 176 S.E.2d at 774).

However, the Court of Appeals also stated in *Quinn*:

[A] court must be guided by the fundamental rule of statutory construction that statutes *in pari materia*, and all parts thereof, should be construed together and compared with each other. Thus, courts must harmonize such statutes, if possible, and give effect to each, that is, all applicable laws on the same subject matter should be construed together so as to produce a harmonious body of legislation, if possible.

Id. at 381; 777 S.E.2d at 126 (citations omitted).

13. The original RDU Charter gave the RDUAA board complete authority over the airport. Nothing in the amendments that followed reflects an intent by the legislature to diminish that authority. Plaintiffs’ argument runs contrary to a

reasonable reading of the legislation and ignores the General Assembly's broad grant of authority to the RDUAA board.

14. Plaintiffs also ask this Court to view the phrase "other businesses" in isolation from subsequent language in the RDU Charter in an attempt to make a comparison to the catch-all phrases at issue in *Quinn* and *Lee*. To limit "other businesses" to the preceding words "restaurants, apartments, hotels, motels, agriculture fairs, tracks, motion picture shows, cafes, soda fountains" would render the words "amusements or concessions" which follow the phrase "other businesses" redundant as surplusage, as those types of businesses specifically listed are essentially amusements and concessions. The phrase "other businesses" must be construed and viewed in light of the remainder of the sentence that follows, to wit, "other businesses, amusements or concessions for a term not exceeding 15 years, as may appear to said Authority advantageous or conducive to the development of said airport." 1955 N.C. Sess. Laws ch. 1096, § 1. Viewed in the light of the remainder of the sentence, it is clear that the authority to lease extends to other businesses so long as the proposed business appears to the RDUAA to be advantageous or conducive to the development of the airport. This interpretation is consistent with the broad grant of authority given to the RDUAA board.²
15. Furthermore, the Court concludes that the Lease is not inconsistent with any grant or agreement under which the airport is held. The phrase "grant or agreement" must refer to the grants and agreements by which RDUAA operates an airport under the guidance and regulation, and with financial contributions of the Department of Transportation/FAA under the Federal Airport Act. The FAA has approved the industrial/quarry use designation of the Property and maintains that its approval is not necessary for RDUAA to lease the Property.
16. Because no federal funds were used to acquire the Property and because the Lease is not subject to FAA approval, the Lease does not violate any federal laws nor did RDUAA violate the section 63-47 provision that "public officers of the State, counties and cities shall enforce the rules and regulations of the Federal Aviation Administration." N.C.G.S. § 63-47 (2017).

² To hold otherwise would first require each owning municipality to approve of the Lease, and each owning municipality would thereafter have to agree to the terms of the Lease with the remaining three owning municipalities. Such a result is not contemplated in any provision of the RDU Charter.

17. Plaintiffs argued for the first time at the hearing of this matter that the ~~owning~~ municipalities need not be parties to the agreement but need only ~~approve~~ the agreement. Nowhere is this apparent in the RDU Charter and it runs ~~contrary~~ to the expansive powers given to the RDUAA board by the ~~legislature~~. Plaintiffs' contention that the governing authorities of the Cities of Raleigh and Durham and Counties of Wake and Durham must approve the Lease runs contrary not only to subsections 7(c) and 7(e) of the RDU Charter as amended in 1959, which explicitly granted to RDUAA exclusive authority to lease the Property, but also runs contrary to how RDUAA has historically leased property without objection by the ~~owning~~ authorities. Moreover, with ~~respect~~ to subsection 7(e) of the RDU Charter, as amended, in order to lease to ~~other~~ businesses, it is only the RDUAA that must determine that the other business is conducive or advantageous to the development of the airport.
18. Plaintiffs also are incorrect that the Lease conveys usage rights to the minerals on the Property that exceeds the property rights associated with the ordinary type of lease contemplated in the RDU Charter.
19. The term "lease" in the RDU Charter must also include mineral leases because the General Assembly has indicated its ability and willingness elsewhere in the General Statutes to exclude mineral leases from the general class of leases. *See N.C.G.S. § 22-2 (2017)* (delineating "contracts for leasing land for the purpose of digging for gold or other minerals, or for mining generally, of whatever duration," and "all other leases and contracts for leasing lands exceeding in duration three years" as contracts that must "be put in writing and signed by the party to be charged therewith"). The General Assembly has made no such distinction in the RDU Charter.
20. Additionally, the Lease does not represent a *profit à prendre* because "the grant of a *profit à prendre* does not preclude the grantor from exercising a like right upon the land or granting such right to others," *State ex rel. Rohrer v. Credle*, 86 N.C. App. 633, 636, 359 S.E.2d 45, 47 (1987) (quoting *Builders Supplies Co. v. Gainey*, 282 N.C. 261, 267, 192 S.E.2d 449, 453 (1972)), while the language of the Lease here conveys "[a] possessory interest," which "involves the exclusive possession of a certain space," *Builders Supplies Co.*, 282 N.C. at 270, 192 S.E.2d at 455.
21. RDUAA is not subject to any restrictions outlined in N.C.G.S. § 63-56(f) because RDUAA is not a board formed by an agreement between two or more municipalities pursuant to N.C.G.S. § 63-56(d). It is instead an independent

creation of the General Assembly formed pursuant to the RDU Charter and its powers are provided for in that legislation.

22. The RDU Charter was not superseded by the subsequent enactment of N.C.G.S. § 63-56 because “[a] local statute enacted for a particular municipality is intended to be exceptional, and for the benefit of such municipality, and is not repealed by the enactment of a subsequent general law.” *Bland v. City of Wilmington*, 278 N.C. 657, 663, 180 S.E.2d 813, 817 (1971) (quoting *City of Charlotte v. Kavanaugh*, 221 N.C. 259, 263, 20 S.E.2d 97, 99 (1942)).
23. The General Assembly confirmed that RDUAA exercises statutory authority outside of the powers of boards formed pursuant to section 63-56 when the General Assembly stated in the 1957 amendments to the RDU Charter that, “[i]n addition to all other rights and powers herein conferred, the Raleigh-Durham Airport Authority . . . is authorized and empowered to exercise the powers granted to municipalities by the terms of Article 6, Chapter 63, of the General Statutes of North Carolina concerning public airports and related facilities.” 1957 N.C. Sess. Laws ch. 455, § 2.
24. RDUAA satisfied the Open Meetings Law by discussing the Lease at a meeting noticed to and open to the public, regardless of whether public comment was allowed, because the Open Meetings Law requires only that the “hearings, deliberations, and actions of [public bodies] be conducted openly.” N.C.G.S. § 143-318.9; *see also Sigma Constr. Co. v. Guilford Cty. Bd. of Educ.*, 144 N.C. App. 376, 380-81, 547 S.E.2d 178, 181 (2001).
25. RDUAA is not subject to the requirements of N.C.G.S. § 160A-272 as asserted by Plaintiffs because RDUAA is not a “city” as contemplated in that statute. *See* N.C.G.S. § 160A-1 (2017) (“The term ‘city’ does not include counties or municipal corporations organized for a special purpose.”).
26. As a matter of law, RDUAA has the statutory authority independent of the Cities of Raleigh and Durham and the Counties of Wake and Durham to enter into the Lease, and therefore, summary judgment in favor of Defendants is proper.

As there are no genuine issues of material fact, Defendants are entitled to judgment as a matter of law.

IT IS THEREFORE ORDERED AND ADJUDGED:

1. That Plaintiffs' Motion for Partial Summary Judgment is DENIED.
2. That Plaintiffs' Motion for Preliminary Injunction is DENIED.
3. That Defendants' Motions for Summary Judgment are GRANTED and the plaintiffs' claims against them are hereby DISMISSED with prejudice

Signed this 8 day of November, 2019.



The Honorable A. Graham Shirley
Superior Court Judge Presiding

CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of the foregoing document was served on the persons indicated below via electronic mail and by depositing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

Nigle B. Barrow, Jr.

127 W. Hargett Street, Suite 500
Raleigh, NC 27601
texbarrow@att.net
Counsel for Plaintiffs

Isabel Worthy Mattox

Matthew J. Carpenter
MATTOX LAW FIRM
127 West Hargett Street, Suite 500
Raleigh, NC 27601
isabel@mattoxlawfirm.com
Counsel for Plaintiffs

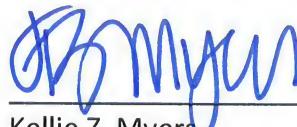
J. Mitchell Armbruster

Steven M. Sartorio
J. Gray Wilson
SMITH ANDERSON BLOUNT DORSETT
MITCHELL & JERNIGAN, LLP
PO Box 2611
Raleigh, NC 27602-2611
marmbruster@smithlaw.com
ssartorio@smithlaw.com
gwilson@smithlaw.com
*Counsel for Defendant Raleigh-Durham
Airport Authority*

Patricia P. Shields

HEDRICK GARDNER KINCHELOE &
GAROFALO, LLP
4131 Parklake Avenue, Suite 300
Raleigh, NC 27612
pshields@hedrickgardner.com
*Counsel for Defendant Wake Stone
Corporation*

This the 8th day of November, 2019.



Kellie Z. Myers
Wake County Trial Court Administrator
PO Box 1916
Raleigh, NC 27602
kellie.z.myers@nccourts.org